

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-144468-14

Date:

May 18, 2015

### Legend

Parent =

Purchaser =

Target =

Target Sub 1 =

Target Sub 2 =

Target Sub 3 =

Target Sub 4 =

Target Sub 5 =

Target Sub 6 =

Target Sub 7 =

Target Sub 8 =

Target Sub 9 =

Target Sub 10 =

Target Sub 11 =

PLR-144468-14

3

Target Sub 12 =

Target Sub 13 =

Target Sub 14 =

Target Sub 15 =

Target Sub 16 =

Target Sub 17 =

Target Sub 18 =

Target Sub 19 =

Target Sub 20 =

PLR-144468-14

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Target Sub 21 =

Target Sub 22 =

Target Sub 23 =

Target Sub 24 =

Target Sub 25 =

Target Sub 26 =

Target Sub 27 =

Target Sub 28 =

Target Sub 29 =

Target Sub 30 =

Target Sub 31 =

Target Sub 32 =

Target Sub 33 =

Target Sub 34 =

Target Sub 35 =

Target Sub 36 =

PLR-144468-14

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Target Sub 37 =

Target Sub 38 =

Target Sub 39 =

Target Sub 40 =

Target Sub 41 =

Target Sub 42 =

Target Sub 43 =

Target Sub 44 =

Target Sub 45 =

Target Sub 46 =

Target Sub 47 =

Target Sub 48 =

Target Sub 49 =

Target Sub 50 =

Target Sub 51 =

Target Sub 52 =

Target Sub 53 =

Target Sub 54           =

Target Sub 55           =

Target Sub 56           =

Seller                   =

Date A                   =

Date B                   =

Date C                   =

Company Official       =

Dear                   :

This letter responds to a letter dated November 25, 2014, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension to file a “§ 338 election” under § 338(g) of the Internal Revenue Code (the “Code”) with respect to Purchaser’s acquisition of the stock of Target and the deemed acquisitions of the stock of Target Subs 1 - 56 (sometimes hereinafter referred to as the “Election”) on Date A. The material information is summarized below.



Prior to Date A, Target was a foreign entity treated as a corporation for United States federal income tax purposes, and wholly owned by Seller. On Date A, Target owned at least 80 percent of the stock of Target Subs 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 21, 25, 26, 27, 28, 29, 30, 32, 34, 36, 37, 38, 40, 41, 42, 44, 46, 47, 49, 50, 52, 54, 55, and 56. Target Sub 17 owned at least 80 percent of the stock of Target Sub 45. Target and Target Sub 17 jointly owned at least 80 percent of the stock of Target Subs 1, 5, 20, 24, 33, 39, and 43. Target Sub 21 owned at least 80 percent of the stock of Target Subs 22, 23, and 35. Target Sub 15 owned at least 80 percent of the stock of Target Sub 14. Target Sub 50 owned at least 80 percent of the stock of Target Subs 31, 48, and 53. Target Sub 52 owned at least 80 percent of the stock of Target Sub 51. Target and Target Sub 33 jointly owned at least 80 percent of the stock of Target Sub 19. Target Subs 1 - 56 are all foreign corporations or foreign entities treated as corporations for United States federal income tax purposes.

Purchaser and Seller entered into a purchase agreement for Purchaser to acquire all of the Target stock from Seller. On Date A, Purchaser acquired all of the stock of Target from Seller in exchange for cash, pursuant to the purchase agreement. It is represented that Purchaser's acquisition of the stock of Target qualified as a "qualified stock purchase," as defined in § 338(d)(3). On Date C, a date after the due date for the Election, Purchaser merged with and into Parent.

The Election was due on Date B, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time Parent requested relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) and for which the new return position requires or permits a regulatory election for which relief is requested.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if: (1) the purchasing corporation makes or is treated as having made a "§ 338 election" or a "§ 338(h)(10) election"; and (2) the acquisition is a "qualified stock purchase."

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic

extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.338-2(d)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent, as successor-in-interest to Purchaser, to file the Election, provided Parent and Purchaser acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown that Purchaser and Parent acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 90 days from the date on this letter, for Parent to file the Election with respect to Purchaser's acquisition of stock of Target and the deemed acquisitions of the stock of Target Subs 1 - 56, provided that:

1. With respect to Target Subs 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 21, 25, 26, 27, 28, 29, 30, 32, 34, 36, 37, 38, 40, 41, 42, 44, 46, 47, 49, 50, 52, 54, 55, and 56, a valid § 338(g) election is made with respect to the purchase of Target.
2. With respect to Target Sub 45, a valid § 338(g) election is made with respect to the purchase of Target Sub 17.
3. With respect to Target Subs, 1, 5, 20, 24, 33, 39, and 43, a valid § 338(g) election is made with respect to the purchase of each of Target and Target Sub 17.
4. With respect to Target Subs 22, 23, and 35, a valid § 338(g) election is made with respect to the purchase of Target Sub 21.
5. With respect to Target Sub 14, a valid § 338(g) election is made with respect to the purchase of Target Sub 15.
6. With respect to Target Subs 31, 48, and 53, a valid § 338(g) election is made with respect to the purchase of Target Sub 50.
7. With respect to Target Sub 51, a valid § 338(g) election is made with respect to the purchase of Target Sub 52.

8. With respect to Target Sub 19, a valid § 338(g) election is made with respect to the purchase of each of Target and Target Sub 33.

WITHIN 90 DAYS OF THE DATE ON THIS LETTER, Parent must file the Election of Form 8023, in accordance with § 1.338-2(d) and the instructions to the form. A copy of this letter must be attached to Form 8023.

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, all relevant parties must file or amend, as applicable, all returns and amended returns (if any) necessary to report the transaction as a § 338 transaction for the taxable year in which the transaction was consummated (and for any other affected taxable year). A copy of this letter and a copy of Form 8883 must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy the requirement of attaching a copy of this letter by attaching a statement to their return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on the taxpayers' (Parent's, Purchaser's, Target's, and Target Subs 1 – 56's) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the federal income tax returns involved.

We express no opinion as to: (1) whether the acquisition of the Target stock qualifies as a "qualified stock purchase" under § 338(d)(3); or (2) any other tax consequences arising from the Election.

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: